
Sent: 22/04/2021 7:36:47 AM
Subject: 12 Ponsonby Parade Seaforth NSW 2092 DA 2021/0008 WRITTEN
SUBMISSION: LETTER OF OBJECTION #2 Submission: Twigg & Crabb
Attachments: Twigg Crabb Submission 22 April 21.docx;

SUBMISSION: TWIGG & CRABB

a written submission by way of objection to DA 2021/0008

Michael Twigg and Nicole Crabb
9 Ross Street
Seaforth
NSW 2092

22 April 2021

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re:
12 Ponsonby Parade Seaforth NSW 2092
DA 2021/0008

WRITTEN SUBMISSION: LETTER OF OBJECTION #2
Submission: Twigg & Crabb

This document is a written submission by way of objection to DA 2021/0008 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

This Submission raises our ongoing objection to this DA.

We refer to our original submission dated 27 January 2021, which we attach.

VIEW LOSS

Our major concern remains the **view loss to the harbour** caused directly from the non-compliant front setback, and excessive FSR. We remain extremely concerned that 20m high trees are still located within our viewing corridor, and we ask for those two trees to be removed from our viewing corridor.

The non-compliance to front setback and FSR, and the positioning of the two 20m tall trees causes the devastating harbour view loss.



Council will note that the height pole in this photograph shows loss of harbour view. The green ovals represent the two 20m high trees. The view loss can be resolved by lowering the excessive storey heights in this zone, adjust the proposed development to achieve a fully compliant front setback to align with neighbours, and reducing the floor plate at the upper level to maintain the harbour view. The proposed trees will need to be relocated out of the harbour viewing corridor. The view loss would be a 100% loss – a devastating outcome. The issue here is that a ‘more skilful design’ can avoid the view loss. It is an easy ‘fix’.

Council must note that the Applicant has not shown the Registered Surveyors Drawing on the DA drawing. We have superimposed the Registered Surveyors drawing on the DA drawing DA 06 Level 01 Plan, to clearly show that the proposed eaves, deck, and wall zones on the proposed development does not align with the immediate neighbour.

Clause DCP 4.1.4.1 Street Front Setbacks states:

[a] Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity



Council will note that when the Registered Surveyors drawing is superimposed on the DA drawing, the non-compliant front setback is clearly obvious

We ask that Unit 7 be reduced in size, to accord with the alignments of the neighbour, to ensure that our view loss is reduced. We further ask that Bedroom 1 and 2 of Unit 7 be reduced to better maintain the view. We ask for the Roof to Unit 7 be reduced by 0.5m. The FSR is excessive, so there is ample GFA to affect this outcome.

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that recommended a refusal of Development Consent to DA2020/1338 for Alterations and Additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA2020/1338 involved a consideration of a view loss arising from a proposed development that presented non-compliances to envelope controls. The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The application was supported by a detailed Clause 4.6 submission requesting a variation. However, the determination found that the submission did not demonstrate that the non-compliance was unreasonable or unnecessary in the circumstances of the application, nor provided sufficient environmental planning grounds to justify the non-compliance with the development standard.

The Assessment Report found that:

‘the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.’

The Assessment Report within the Tenacity Assessment concluded:

“Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties. In this respect, it is noted that the proposal seeks to increase the internal ceiling height of the ground floor level to 2.8m, with proposed ceiling levels ranging from 2.5m to 2.9m at the upper floor. Furthermore, the proposal has been designed with the maximum width of each room running across the site, which could be readily reduced/flipped to minimise the width of the resultant impact’

In light of the level of non-compliance and noting that a more skilful design could lessen the impact, the potential impact upon views currently enjoyed from properties along Montpelier Place is considered unreasonable.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views.”

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Reporting Manager and NBC Responsible Officer Assessment Report.

We contend that this refusal on view loss grounds by the DDP, shows that a moderate view loss, caused by non-compliance to development controls is unreasonable, and gives strong grounds for refusal.

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns.

This objection will show that the non-compliance in the DA, **FSR and Front Setback**, causes view loss even more severe than DA2020/1338.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the devastating impact is considered unreasonable.

Council will also note that the DA before you is a new build, and therefore there is even less reason why the Applicant cannot comply with the planning regime, and develop a compliant design solution to avoid view loss to neighbours.

The DA was assessed with regard to the criteria of Clause 4.6 [3] of MLEP 2013, and was found that:

‘in light of the building height non-compliance proposed, the proposal should not be supported’

We attach for Council reference the severity of the view loss that was considered unacceptable by the DDP. This level of view loss was considered as ‘moderate’ by the assessing officers and the DDP. These photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

We contend that our view loss is **even more severe** than that shown in the height pole consideration by Council.

We refer to the Tenacity Assessment within our 27 January 2021 Submission, and we upgrade the view loss to **devastating**.

We ask for amended plans to be submitted that:

1. aligns the proposed development in terms of street setback,
2. further reduce Unit 7 to maintain harbour view.
3. Remove proposed trees in viewing corridor

In this Written Submission we again ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Reduce Building at south-west corner [Unit 7 Block] by 0.5m, with the ground floor reduced to RL 66.3 [adjacent ground level existing at RL 66.28], with a flat roof at RL 72.4 to improve viewing corridor to harbour. Delete pitched roof detail over Unit 7. Reduce heights further until harbour view corridor is protected.
2. Removal of all new proposed 20m high trees to harbour viewing corridor, including all new trees over 4m in height in the western setback zone, and in the Ponsonby Parade front setback zone.

3. Increase Street Setbacks to correspond with external wall zones of neighbours, represented by neighbour's setbacks with a 9.7m setback to #16 Ponsonby Seaforth and 12.3m setback to #10 Ponsonby Seaforth. Eaves to be reduced to match neighbours.
4. Reduce all storey heights to a maximum of 3.2m in all Units, and reduce ceiling heights to 2.7m in all Units. Position ground levels to match *ground level existing* at ground level terrace levels
5. Reduce Building Heights, and all structures on the roof to be under 8m
6. Further reductions of bulk in the central section of the site that represents the 'Rear 25%' of the site, to ensure central 12.6m zone [50.29m x 25%] is no greater than single storey.
7. Increase Sill levels to 1.7m high, with obscured glass to all windows in western elevation
8. All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
9. All planters in Units facing neighbours at all levels to have landscape to a 1.8m height
10. The dilapidation survey should comprise a detailed inspection of neighbouring building to the west both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of neighbouring building to the west to allow them to confirm that the dilapidation report represents a fair record of actual conditions.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, the height pole adjusted to show the new location and identified within this Submission.

Yours faithfully,

Michael Twigg and Nicole Crabb
9 Ross Street
Seaforth
NSW 2092

[Appendix: Previous Submission 27 January 2021]

SUBMISSION: TWIGG & CRABB
a written submission by way of objection to DA 2021/0008

Michael Twigg and Nicole Crabb
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27 January 2021

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
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Dear Chief Executive Officer,

Re:
12 Ponsonby Parade Seaforth NSW 2092
DA 2021/0008

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Twigg & Crabb

This document is a written submission by way of objection to DA 2021/0008
lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

The DA seeks development consent for the carrying out of certain development, namely:

the construction of a seniors housing development incorporating 9 x in-fill self-care apartment style dwellings and basement car parking for 19 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD").

Construction Cost: \$5.5m

The subject site is zoned R2 pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013"), and there is no reason, unique or otherwise, why a fully compliant solution to pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD") and LEP and DCP controls, as appropriate, cannot be designed on the site.

SECTION 1: EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

We are being assisted by a very senior experienced consultant assisting us in the preparation of this Written Submission.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The proposed development is a clear case of overdevelopment:

1. Height

>8m. Non-compliant exceeds 8m. [East Elevation, Section 1, Section 4]

> Single Storey in Rear 25% of the total site area. Non-compliant as no part of the proposed development is single storey.

2. **FSR.** Non-compliant. Strict compliance is necessary

3. **Front Setback.** Non-compliant. Does not accord with prevailing street pattern

4. **Landscape.** Proposes 20-25m high trees in our viewing corridors and solar access corridors

5. **Excessive Earthworks.** Excessive 5m deep.

6. **Lack of modulation and raised plinth.** Continuous 'block' forms over 33m long, rather than multiple [four] pavilions to break up the mass, and to respond better to neighbour's dwellings. The ground floor is positioned 2.8m above street level, presenting a significant 4m walled frontage to the streetscape.

Major Non-compliance concerns

Provision	Compliance	Consideration
Height	No	Exceeds 8m
Front Setback	No	9.7m to 12.3m prevailing v 6.5m proposed [89% non-compliance]
FSR	No	Greater than 0.6:1, significant non-compliance
40[c] Building located in the rear 25% area of the site must not exceed 1 Storey in height		New work will encroach upon the rear 25% of the site. The central section of the site, being the furthest zone away from the street frontages must be considered the 'Rear 25%'. This area exceeds single storey, and there is insufficient zone in this area.

The non-compliance to standards leads directly to our amenity loss. Our main concerns are:

- **View Loss:** [refer to our Tenacity Assessment page 33]
- Solar Loss
- Visual & Acoustic Privacy
- Visual Bulk

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

The Applicant has had no prior adequate discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to multiple controls.

It does seem very unreasonable that this proposed development will remove our amenity to improve the amenity of the proposal, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be substantially amended due to the non-compliant Building Height, FSR, and Front Setback.

We ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to refuse the DA or condition the consent.

We are concerned to the non-compliance to SEPP HSPD

- Clause 2 Aims of Policy
- Clause 29 Character
- Clause 30 Site Analysis
- Clause 31 Design of in-fill self-care housing
- Clause 32 Design of residential development
- Clause 33 Neighbourhood Amenity and Streetscape
- Clause 34 Visual and Acoustic Privacy
- Clause 35 Solar Access
- Clause 40 Development Standards

We are concerned to the non-compliance of the LEP:

- 1.2 Aims of Plans
- 2.3 Zone Objectives Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.4 Floor Space Ratio
- 6.2 Earthworks

We are concerned to the non-compliance of the DCP.

- 1.7 Aims and Objectives of this Plan
- 3.1.1 Streetscape (Residential areas)
- 3.3.1 Landscaping Design
- 3.4.1 Sunlight Access & Overshadowing
- 3.4.2 Privacy and Security
- 4.1 Residential Development Controls
- 4.1.3 Floor Space Ratio (FSR)
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.1 Street Front setbacks
- 4.1.5 Open Space and Landscaping
- 4.1.8 Development on Sloping Sites
- 4.4.5 Earthworks (Excavation and Filling)
- 4.4.5.1 General
- 4.4.5.2 Excavation

The non-compliance to the SEPP, LEP and DCP outcomes and controls forms the basis of our objection. Our loss of amenity will suffer from these non-compliances to outcomes and controls.

Our major concern stems from the non-compliant building height, the excessive two-storey component in the rear 25% of the site [the centre of the site], the non-compliant front setback that fails to address the street pattern, and the lack of proper consideration that these non-compliance have on our view of the harbour, the loss of solar access from the non-compliant height, and the incomplete consideration of architectural devices to better provide privacy.

This design approach has led directly to the substantial non-compliance in Building Height, Wall Height, FSR, Earthworks and all Setbacks.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Reduce Building Heights, and all structures on the roof including solar panels to be under 8m
2. Increase Street Setbacks to correspond with external wall zones of neighbours, represented by neighbour's setbacks with a 9.7m setback to #16 Ponsonby Seaforth and 12.3m setback to #10 Ponsonby Seaforth. Eaves to be reduced to match neighbours.
3. Reduce all storey heights to a maximum of 3.2m in all Units, and reduce ceiling heights to 2.7m in all Units. Position ground levels to match *ground level existing* at ground level terrace levels
4. Reduce Building at south-west corner [Unit 7 Block] by 0.5m, with the ground floor reduced to RL 66.3 [adjacent ground level existing at RL 66.28], with a flat roof at RL 72.4 to improve viewing corridor to harbour. Delete pitched roof detail over Unit 7. Reduce heights further until harbour view corridor is protected.
5. Further reductions of bulk in the central section of the site that represents the 'Rear 25%' of the site, to ensure central 12.6m zone [50.29m x 25%] is no greater than single storey.
6. Removal of all new proposed trees to harbour viewing corridor, and solar access corridor, including all new trees over 4m in height in the western setback zone, and in the Ponsonby Parade front setback zone.
7. Increase Sill levels to 1.7m high, with obscured glass to all windows in western elevation
8. All privacy screens to be shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
9. All planters in Units facing neighbours at all levels to have landscape to a 1.8m height
10. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
11. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
12. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
13. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration

levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council

14. The dilapidation survey should comprise a detailed inspection of #9 Ross both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of #9 Ross to allow them to confirm that the dilapidation report represents a fair record of actual conditions.

We agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that would not result in outcomes as noted above in respect to non-compliant Building Height, FSR, Front Setback, Rear 25% Control, and Earthworks and other non-compliances leading to poor amenity outcomes.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be under 8m in height, to have a legitimate Rear 25% at single storey or less, to have an FSR that does not cause amenity harm.

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form. Our expectation was that the proposed development would not propose 20-25m high new trees into our viewing corridor to the harbour, but 3-4m screening landscape to better screen the proposed development.

The ‘*legitimate expectation*’ that we had as a neighbour was for street frontages to align with the predominate the causing amenity problems, and significantly reducing the capability of planting to achieve softening of the built form.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be a requirement to incorporate and enhance the built form through planting to mitigate the impacts of the building bulk and scale, particularly along the side boundaries.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Our property shares a common boundary with the subject property.

The subject site lies to the east of our property.

We enjoy good levels of view sharing, privacy and daylight over the subject site.

Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red'.



SECTION 3: SITE DESCRIPTION, LOCATION AND CONTEXT

The SEE states:

The development site comprises Lots 21 and 22 in DP 7577, No's 12 and 14 Ponsonby Parade, Seaforth. The total site area is 2023 square metres.

The consolidated allotment is square in shape with frontage to both Ponsonby Parade and Ross Street. The sites contain single storey brick cottages, with detached carparking and shed structures. The sites are served by a driveway access from Ross Street and pedestrian pathway access to Ponsonby Parade.

The development site has primary frontage and addressed to Ponsonby Parade of 40.235 metres, secondary frontage to Ross Street of 40.235 metres and depth of 50.29 metres. The site falls across its surface by approximately 4 metres in a southerly direction and contains a number of trees predominantly located on the northern portion of the allotment.

SECTION 4: DEVELOPMENT PROPOSAL

The SEE states:

The construction of a seniors housing development incorporating 9 x in-fill self-care apartment style dwellings (1 x 2 bedroom and 8 x 3 bedroom) and basement car parking for 19 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD").

SECTION 5: OUTSTANDING INFORMATION

Height Poles

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks, Balustrades, Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Geotechnical Report

We ask for the Geotechnical Report to be revised to give greater clarity on the items raised in this Submission.

Survey Levels

The Applicant has not adequately located the registered surveyor's levels on plans, sections or elevations, particularly along the western boundary.

We are greatly concerned that the Applicant has modified the Registered Surveyors Plan to misrepresent neighbours' dwellings to the west, and neighbour's buildings to the east. We ask council to ensure that the Registered Surveyors drawing is shown precisely as drawn by the Registered

Surveyor. The applicant's drawings have been altered in these respects so as not to clearly define external wall zones, decks, and eaves, and in doing so presents false and misleading drawings to Council. We ask that Council obtain amended plans to clearly define neighbour's dwellings precisely as the Registered Surveyor has presented them, to avoid proper consideration of the DA.

Overshadowing Diagrams

The Applicant is required to submit hourly solar access diagrams on our windows to assess compliance, caused by non-compliant FSR, Building Height, and 'Rear 25%'.

We object to any additional overshadowing caused by the non-compliant envelope compared with a compliant envelope, particularly in the winter morning hours.

SECTION 6: MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

1. The extent of the proposed building envelopes
2. The siting and extent of the proposed development without having sufficient consideration for maintaining amenity, with substantial non-compliance of controls
3. Non-compliant Height Proposed Development is greater than 8m.
4. Greater than Single Storey in Rear 25% of the total site area. Non-compliant as no part of the proposed development is single storey.
5. FSR. Non-compliant. Strict compliance is necessary
6. Front Setback. Non-compliant. Does not accord with prevailing street pattern
7. Trees up to 25m proposed in viewing corridor
8. Excessive Earthworks
9. View Loss
10. Solar Loss
11. Visual & Acoustic Privacy
12. Visual Bulk

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with SEPP HSPD, LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to SEPP HSPD, LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a large size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

SECTION 7: STATUTORY PLANNING FRAMEWORK

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The following section of this Written Submission assesses the proposed development against the relevant provisions of the SEPP 2004 (as amended).

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Provision	Compliance	Consideration
2 Aims of Policy	No	<p>The design principles that should be followed to achieve built form that responds to the characteristics of its site and form, have not been followed</p> <p>The proposed built form does not minimise or, reduce the impacts on the amenity and character of the area and is considered to be not of a good design.</p> <p>When considered against the aim of achieving a good design, the development must also be considered in context with the provisions of SEPP (HSPD). The aim of the policy is to encourage seniors housing achieving a good design outcome which respects the character of the locality it is located in and seeks to minimise the impacts</p>

		on amenity and the character of the area. The proposed built form does not minimise impacts on the character as detailed within this report and is therefore considered inconsistent with the aims of this policy.
29 Character	No	<p>The development as proposed is considered to be inconsistent with the requirements contained within Clause 25 (5) for the following reasons:</p> <p>The proposed bulk and scale of the development is considered excessive and inconsistent with the character within the immediate locality which is demonstrable with the non-compliant FSR of 0.6:1</p>
30 Site Analysis	No	<p>Fails to adequately address View Loss, Solar Loss, Privacy Loss</p> <p>Fails to properly assess prevailing Street Setbacks and Street Frontage Features</p> <p>Fails to properly assess Built Form & Character of Adjoining Development</p> <p>Fails to consider the Built Form patterns of neighbouring developments, and proposes a scheme with little articulation of the built form</p>
31 Design of Infill Self Care Housing	No	<p>Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.</p> <p>The provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals</p>

		<p>inconsistencies with regards to the requirements of SLP is undertaken hereunder.</p> <p>Responding to context</p> <p>The proposed development provides a two storey development with basement parking. The building form represents two substantial building mass oriented east west across the site providing no integration with the natural environment or achieving a balance between landscapes and built form. The lack of architectural devices to break up the continuous 'block' forms is a major concern with the proposal. The massive block forms are completely 'foreign' to the neighbourhood that is single residential dwellings</p> <p>The proposed built form is considered inconsistent with the desired character of the locality which seeks low density development forms. The scale of the development is excessive even allowing for the additional density discretions provided by SEPP HSPD and the beneficial and faculative nature of this instrument.</p> <p>The overall height and scale of the proposed building is considered excessive and is not consistent with development that currently exists on this site and on the adjoining development.</p> <p>Building bulk is considered not acceptable, with the massing of the buildings not being broken-up by variation in the building form.</p> <p>Site Planning and design</p> <p>The proposed development does not minimise the impact on the neighbourhood character which integrates older established medium density developments with single low density forms of development.</p> <p>The developments presentation to the street frontages is reflective of a large residential flat building elevated above street level and framed by a large wall seeking to obscure the substantial ramp access required for the site.</p> <p>Impacts on streetscape</p>
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		<p>As identified above, the development does not provide a sympathetic presentation to the street or integration with the landform in a landscaped setting. The building does not reflect a low density residential character.</p> <p>The landscape plans submitted with the application do not provide for a high-quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting. Inappropriate planting of tree up to 25m are proposed within harbour viewing corridors and solar access corridors of neighbours</p>
32 Design of Residential Development	No	<p>Fails to give adequate regard has been given to the principles set out in Division 2.</p> <p>In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2</p>
33 Neighbourhood Amenity & Streetscape	No	<p>The building form at the front of the site is not considered to adequately respond to the land form with an elevated ground floor above a basement level and imposing front wall structure forming a barrier to the extensive accessible ramp which requires a substantial amount of the front setback.</p> <p>Fails to be designed so that the front building of the development is set back in sympathy with the existing building line</p> <p>Fails to maintain building height under 8m</p> <p>Fails to maintain single storey or less in 'Rear 25%'</p> <p>Fails to propose landscape that protects neighbours amenity</p>

		<p>The proposed development is offensive, jarring or unsympathetic to the streetscape or having regard to the built form characteristics of development throughout the immediate locality</p> <p>The proposed development is not considered to appropriately respond to the existing character of the area.</p> <p>The lack of substantive articulation of the built form relates unfavourably to its context and will negatively contribute to the quality and identity of the site.</p> <p>The current proposal represents an unsatisfactory design outcome for the site and locality from that presently existing on the site currently by virtue of the lack of articulation and façade treatment to street frontages, and the over development caused by the scale of the development in the 'Rear25%', being the central part of the site.</p> <p>The siting and location of buildings within the site has not given regard to the front building line, nor maintain height controls, and has not provided sufficient landscape buffer at a suitable height in order to preserve the amenity of the adjoining properties in terms of privacy, solar access, and view lines.</p> <p>The proposed setbacks to the front of the development and the extent of landscaping provided within the setback are considered not satisfactory to minimise the visual impact of the development.</p> <p>The lack of articulation and stepping of the built form are not sympathetic to the character in the area and does not provide an effective and sensitive transition between the subject development and surrounding development.</p> <p>The proposal does not include areas of landscaping which are consistent and sympathetic to the existing provision of landscaping throughout the streetscape.</p> <p>Impacts on neighbours</p> <p>The proposed development fails to respond to the character of development in this locality and results in</p>
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		<p>numerous impacts on the neighbouring properties. Our property suffers view loss, privacy concerns, and overshadowing</p> <p>Internal site amenity</p> <p>The site layout creates pedestrian access which is overwhelming the front setback of the site and channels occupants into a single gun barrel access path, to an underground entry</p>
34 Visual & Acoustic Privacy	No	<p>The development has not been designed to maintain a reasonable level of acoustic and visual privacy between properties. Inappropriate building street setbacks, and unreasonable attention to the 'Rear 25%', being the central zone of the site, and ineffective use of privacy treatments do not maintain a satisfactory level of privacy to adjoining properties.</p> <p>Incomplete consideration of proposed windows and decks that will look immediately into neighbours dwellings</p> <p>Concern to mechanical plant noise</p>
35 Solar Access	No	<p>Loss of solar access from non-compliant 8m building height</p> <p>The proposed development removes winter sunshine due to non-compliant building height.</p>
40 Development Standards	No	<p>Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.</p> <p>Non-compliance</p> <p>[a] Heights 8m</p> <p>The building height exceeds the 8m maximum at various sections of the building.</p>

		<p>[c] Building located in the rear 25% area of the site must not exceed 1 Storey in height</p> <p>New work will encroach upon the rear 25% of the site. The central section of the site, being the furthest zone away from the street frontages must be considered the 'Rear 25%'. This area exceeds single storey, and there is insufficient zone in this area.</p> <p>The proposed density is assessed as being unacceptable, as development does not fit comfortably within its local context. The overall height and scale of the proposed development is considered excessive and is not consistent with the area.</p> <p>The extent of non- compliance contributes to the bulk and scale of the building form which is considered inconsistent with the character of the locality both established and future character.</p>
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Manly Local Environmental Plan 2013

The SEE states:

Whilst the Development Application has been made pursuant to the SEPP (HS&PD), the following LEP controls have been considered.

The land is zoned R2 Low Density Residential. Seniors housing as defined by the LEP is a prohibited use in the zone. However, the use remains permissible with consent via the operation of SEPP (HS&PD) 2004 and the operation of Clause 1.9 of the LEP. SEPP (HS&PD) 2004 is not omitted from operation by Clause 1.9(2) of the LEP and accordingly is the operative planning instrument.

The following matters are relevant to the development under the MLEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plans	No	The proposal does not comply with the aims of the plan as it fails to promote a high standard of urban design that responds to the existing or desired future character of areas, to ensure all

		development appropriately responds to environmental constraints and does not adversely affect the character, amenity of Manly or its existing permanent residential population particularly to our property, and fails to ensure high quality landscaped areas in the residential environment particularly along the southern boundary.
2.3 Zone Objectives Zone R2 Low Density Residential	No	The proposal does not satisfy the zone objectives. The proposed development is offensive, jarring or unsympathetic, having regard to the built form characteristics of development within the site's visual catchment, particularly from our property
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted. A height greater than 8.5m is proposed.
4.4 Floor Space Ratio	No	The standard is 0.45:1. The proposal is greater than 0.6:1, a >33% non-compliance. The GFA calculations are understated.
6.2 Earthworks	No	The proposal does not comply. The proposal fails to limit excavation proposing excavation to 5m depths.

Aims of the Plan

The proposal does not comply with the aims of the plan as it fails to promote a high standard of urban design that responds to the existing or desired future character of areas, to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity of Manly or its existing permanent residential population particularly to our property, and fails to ensure high quality landscaped areas in the residential environment particularly along all setback zones.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

(2) The particular aims of this Plan are as follows:

(a) in relation to all land in Manly:

- (i) to promote a high standard of urban design that responds to the existing or desired future character of areas, and*
- (ii) to foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and*
- (iii) to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and*
- (iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,*
- (b) in relation to residential development:*
 - (i) to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and*
 - (ii) to ensure high quality landscaped areas in the residential environment, and*
 - (iii) to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and*
 - (iv) to maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres,*

Zone and Objectives

The proposal does not satisfy the zone objectives. The proposed development is offensive, jarring or unsympathetic, having regard to the built form characteristics of development within the site's visual catchment, particularly from our property

The subject property is zoned R2 pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013")

Objectives of zone

- To provide for the housing needs of the community within a low-density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

"whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment"

Commentary:

The non-compliant elements of the proposed development, particularly the non-compliant height, front setbacks, and FSR and would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*

4.3 Height of Buildings

The proposed development does not provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposed development does not control the bulk and scale of buildings.

We contend that the DA fails the objectives of this control as follows:

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

We contend that the non-compliance leads directly to our amenity loss:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment: The prevailing roof forms in the immediate area are generally 6m wall heights with pitched roofs to a maximum of 8m.

(b) to control the bulk and scale of buildings,

Comment: There are no envelopes that present such excessive built form in this zone.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: The loss of morning winter solar access to our windows and decks is of concern to us. We will lose solar access to all our habitable rooms, and we will lose unreasonable solar access to our private open space, directly from the proposed non-compliant development.

No Clause 4.6 Variation Request has been prepared by the applicant, however even if it was provided, the Request would not demonstrate that the development is consistent with the objectives of the zone, and consistent with the objectives of the building height standard.

Strict compliance is reasonable and necessary, to ensure amenity outcomes.

There are insufficient environmental planning grounds exist to justify the variation sought.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

Commentary:

The non-compliant elements of the proposed development, particularly the excessive height, and the non-compliant front setbacks, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

Clause 4.4 Floor Space Ratio

We contend that the proposed development does not ensure the bulk and scale of development is consistent with the existing and desired streetscape character.

We contend that the proposed development does not control building density and bulk in relation to the site area to ensure the development does not obscure important landscape and townscape features.

We contend that the proposed development does not maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

We contend that the proposed development does not minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

The FSR is under calculated as there are stairs, lifts, excess garage size, basement storage areas, garbage areas, areas within the lower two floors, and excessive plant that when included within the FSR calculation, render the FSR grossly in excess of LEP and DCP controls.

We contend that there is additional GFA to be added to the Applicant's calculations that take the GFA and FSR way over the development standard, in particular:

- Stairs & Lifts: *Chami v Lane Cove Council [2015] NSWLEC 1003*
- Excess Garage Size: *Parking Station Pty Ltd v Bayside Council [2019] NSWLEC 1268*
- Basement Storage areas that are <1m above ground: *Glenn McCormack v Inner West Council [2017] NSWLEC 1559*
- Storage below stairs: *Dwyer v Sutherland Shire Council [2018] NSWLEC 1543*
- Garbage Areas <1m above ground: *Landmark Group Australia Pty Ltd v Sutherland Shire Council [2016] NSWLEC 1577*

All these areas must be INCLUDED in the calculation of GFA. They all add bulk to the proposed development. This requires careful assessment by Council.

We ask Council to check these calculations.

In *Parking Station Pty Ltd v Bayside Council [2019] NSWLEC 1268* the Court held that the floor area of car parking provided above the quantity required by the relevant Council DCP was to be INCLUDED in the calculation of GFA (at [23]). This again is straightforward, meaning that if a developer chooses to provide extra parking spaces, such as this Developer, they will be utilising their available GFA.

In *Glenn McCormack v Inner West Council [2017] NSWLEC 1559* the Court held that the floor area of waste management and storage areas contained within a basement; but in an area of the basement 1m or more above the ground level, were to be INCLUDED in the calculation of GFA (at [103]). In reaching its decision, the Court took into consideration the definition of 'basement' as defined by the relevant LEP to confirm if the exclusion at (e) was enlivened. Put simply, areas more than 1m above ground level are not a 'basement' as defined.

In *Dwyer v Sutherland Shire Council [2018] NSWLEC 1543* the Court held that the floor area of storage under stairs: on the ground floor; and greater than 1.4m in height, was to be INCLUDED in the calculation of GFA (at [35] and [60]).

In *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577 the Court held that internal garbage storage areas not within a basement were to be INCLUDED in the calculation of GFA (at [63]).

In *Chami v Lane Cove Council* [2015] NSWLEC 1003 the Court held that the floor area of stairs and a lift well inside of a dwelling house; at each habitable level; and which were not shared between multiple occupancies; were to be INCLUDED in the calculation of GFA (at (273) – [280]).

In light of the absence of appropriately considered Clause 4.6 FSR applications, and other outstanding information, Council may need to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

We bring to Council attention that the FSR calculations, do not take into consideration the substantial storey heights of every floor plate. Any storey height above 3.2m is excessive. The storey heights are excessive, and this leads to the proposals not complying with the objectives of the FSR.

We also bring to Council's consideration **Salanitro-Chafei v Ashfield Council** [2005] NSWLEC 366. We contend that the under forecast of GFA is a considerable concern. We contend that the FSR is greater than **0.6:1**, however this needs assessment by Council against the DA plan drawings. We contend that the proposals '*appears so incongruous in its surrounding*' due to the excessive FSR.

Commissioner Roseth within Salanitro-Chafei stated the following:

26 The standard of 0.5:1 FSR has found expression in numerous planning instruments and policies whose aim is to integrate increased density housing into low-density residential areas without destroying the existing open character. The Seniors Living State Environmental Planning Policy adopts a FSR of 0.5:1 as a "deemed to comply" standard. State Environmental Planning Policy 53 – Metropolitan Residential Development adopts it as the maximum permissible density in relation to dual occupancy. Many local planning instruments and policies guiding dual occupancy development in suburban areas also contain a maximum FSR control of 0.5:1

27 The above suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

28 The proposed building has a FSR significantly in excess of 0.5:1. It does not exhibit any special design skills. This is one of the explanations why it appears so incongruous in its surroundings.

In these respects, we contend that the excessive heights with excessive deep basements, with non-compliant setbacks, produces a FSR that *'is one of the explanations why the proposal appears so incongruous in its surroundings.'*

The assessment of the proposal has identified a discrepancy in the methodology of area calculations undertaken by the applicant. In this respect, the applicant has not included GFA associated with the stair and lift, and areas following the application of any GFA concession to meet parking requirements. The assessment has cited Stairs & Lifts: *Chami v Lane Cove Council [2015] NSWLEC 1003*; Excess Garage Size: *Parking Station Pty Ltd v Bayside Council [2019] NSWLEC 1268*; Basement Storage areas that are <1m above ground: *Glenn McCormack v Inner West Council [2017] NSWLEC 1559*; Storage below stairs: *Dwyer v Sutherland Shire Council [2018] NSWLEC 1543*; Garbage Areas <1m above ground: *Landmark Group Australia Pty Ltd v Sutherland Shire Council [2016] NSWLEC 1577*, and other criteria with respect to the interpretation of GFA.

The variation to the FSR development standard is not assessed to be reasonable, necessary or in the public interest. Being a knock down rebuild development, there is no justifiable reason for the additional floor area proposed. The departure from the FSR development standard should not be supported.

We contend that the DA fails the major objectives of this control as follows:

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The calculation of FSR is significantly understated.

Unreasonable view loss, visual bulk, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

We contend that the DA fails the major objectives of this control as follows:

4.6 Exceptions to development standards

No Clause 4.6 Exceptions to Development Standards request has been submitted for the non-compliant FSR.

The GFA grossly under forecasts the non-compliance to the numerical standard, and therefore cannot be relied upon.

Clause 4.6 states:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

The proposed development does not comply:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the applicant's written request has not adequately addressed the matters in this respect as the request has not addressed the significant under forecast of GFA

- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as identified within this Submission

This is contrary to LEP controls.

6.2 Earthworks

The substantial extent of the earthworks will have a detrimental impact on environmental functions and processes, neighbouring uses, and features of the surrounding land.

We are greatly concerned on the vibration risks associated with this quantity of excavation close the neighbours boundaries.

The continuous vibration from many, many months of excavation would be intolerable, and totally unreasonable. Vibration would make many neighbours house unliveable during this extensive excavation period. We are concerned to the damage to our house.

The noise would be horrendous, and not only affect neighbours, but also the amenity of those at the nearby public domain zones.

We are concerned on the likely disruption, or any detrimental effect on, existing drainage patterns and soil stability in the locality.

We are concerned that the changed water flows through the property, we are concerned that no extensive study commissioned to assess the issue.

We are concerned that altered subsoil water flows will damage our property.

We are concerned on the intensity and extended programme to extract and recover excavated material and bedrock from the proposed development, and the number of truck movements to extract this considerable amount of spoil.

The proposal fails to limit excavation, “cut and fill” and other earthworks.

The objective of the control is stated, inter alia:

1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*

- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

We refer to the Geotechnical Report.

We contend that the Geotechnical Report is not complete.

We consider that the potential landslide hazards associated with the site are:

1. Instability of bedrock outcrop and cliff faces.
2. Instability of existing boundary retaining walls.
3. Instability of new retaining walls.
4. Instability of 'floaters'.
5. Instability of temporary cut batters.

We strongly question the '*assessed likelihood and assessed consequences*' of these matters.

We are concerned that there should be an *assessment of risk to life*. This has not been provided.

Dilapidation Surveys recommends Dilapidation Surveys on our property. We ask that a full photographic survey is undertaken. We ask Council to condition any consent appropriately.

We ask for the applicant to fully consider, alternative excavation techniques to reduce vibrations including using a rock grinder on the excavator, or a large excavator mounted rock saw to grid saw the bedrock into blocks that could then be removed using a ripping tyne attachment to the excavator, or by the use of drill and split techniques. We ask for this technique be not considered as an alternative, but be recommended as the preferred technique, if this technique gives the highest chance of success to reduce vibration risk.

We ask the Geotechnical Engineer give guidance as to techniques required to bring the vibration levels to boundaries to a halt of works at 2mm/sec. We ask for Vibration Emission Design Goals to reduce from 5mm/sec to 2.0mm/sec [halt to works] due to the older fabric of neighbouring dwellings, the full-time occupation of the neighbours dwelling during daylight hours, and the risk of 'floaters' extending under our property from the subject site.

Further geotechnical work must be carried out:

- Dilapidation reports of adjoining buildings and structures.
- Inspection of the outcrop faces following vegetation clearance and directing stabilisation measures, if required.
- Inspection of the test pits exposing the rear of existing boundary walls and existing footings.
- Continuous vibration monitoring during use of rock breakers for bedrock excavation.
- Inspection of cut faces and directing rock cut face stabilisation measures, if required.
- Monitoring of groundwater seepage into bulk excavations.

- Inspection of footing bases.
- Proof rolling of exposed sub-grade.
- Density testing of engineered fill.

Comment:

We ask the Geotechnical Report to address the following matters:

1. The report does not state that the structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), nor does it provide conditions for ongoing management as per Section 6.5(g)(iv).
2. We contend that only temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
3. Until subsurface investigations prove that good quality rock is present, we contend that it be assumed that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
4. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits, but should commence at a maximum of 2mm/sec.
5. The dilapidation survey should comprise a detailed inspection of neighbours property both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of No. 58 to allow them to confirm that the dilapidation report represents a fair record of actual conditions.
6. We request that the Geotechnical Engineer inspect on a daily basis during excavation, considering the significant geotechnical hazards.
7. We request that no excavation be allowed in the 3m side setback zone.
8. We ask the Geotechnical Engineer give guidance as to techniques required to bring the vibration levels to boundaries to a halt of works at 2mm/sec, such as "reduce vibration monitoring could include using a rock grinder on the excavator, or a large excavator mounted rock saw to grid saw the bedrock into blocks that could then be removed using a ripping tyne attachment to the excavator, or by the use of drill and split techniques."
9. Geotechnical and structural requirements to maintain works and not to damage works along the boundary and the dwelling itself.
10. 'Assessed likelihood and Assessed consequences' to be reconsidered
11. An assessment of risk to life to be reconsidered

We ask for the Geotechnical Report to be revised to give greater clarity on these items, and give greater consideration to the works proposed to the boundary, that have not been adequately considered by the Geotechnical Report, nor in the SEE.

Overland Flood Assessment Report

We are also concerned that no Overland Flood Assessment Report has been submitted, to identify the potential Impacts.

SECTION 7.2 MANLY DEVELOPMENT CONTROL PLAN 2013

The following matters are relevant to the development under MDCP:

Provision	Compliance with Control	Compliance with Objectives
<u>1.7 Aims and Objectives of this Plan</u>	No	No
<u>3.1.1 Streetscape (Residential areas)</u>	No	No
<u>3.3.1 Landscaping Design</u>	No	No
3.4.1 Sunlight Access & Overshadowing	No	No
<u>3.4.2 Privacy and Security</u>	No	No
4.1 Residential Development Controls	No	No
4.1.2 Height of Buildings		
4.1.2.1 Wall Height	No	No
4.1.2.2 Number of Storeys	No	No
4.1.2.3 Roof Height	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.3.2 Exceptions to FSR for Plant Rooms	No	No
4.1.3.3 Exceptions to FSR for Open Balconies	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.4.1 Street Front setbacks	No	No
4.1.4.2 Side setbacks and secondary street frontages	No	No
4.1.4.4 Rear Setbacks	No	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	No	No
4.1.5 Open Space and Landscaping	No	No

4.1.5.1 Minimum Residential Total Open Space Requirements	No	No
4.1.5.2 Landscaped Area	No	No
4.1.8 Development on Sloping Sites	No	No
4.4.5 Earthworks (Excavation and Filling)	No	No
4.4.5.1 General	No	No
4.4.5.2 Excavation	No	No
4.4.5.3 Filling	No	No
4.4.5.4 Retaining walls	No	No

1.7 Aims and Objectives of this Plan

The General Aims of this plan are to:

- a) *Ensure that development contributes to the quality of the natural and built environments.*
- b) *Encourage development that contributes to the quality of our streetscapes and townscapes.*
- c) *Ensure that development is economically, socially and environmentally sustainable and to require the principles of ecologically sustainable development to be taken into consideration when determining DAs.*
- d) *Ensure future development has consideration for the needs of all members of the community.*
- e) *Ensure development positively responds to the qualities of the site and its context.*
- f) *Ensure development positively responds to the heritage and character of the surrounding area*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

Streetscape

3.1.1.1 Complementary Design and Visual Improvement

- a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*
- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
 - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
 - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
 - iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
 - v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
 - vi) *visually improve existing streetscapes through innovative design solutions; and*
 - vii) *incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Setback Principles in Low Density Areas

- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property. The proposed development does not maintain building heights at a compatible scale with adjacent development, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys.

3.1.1.1 Complementary Design and Visual Improvement

We contend that the proposed development does not complement the predominant building form in the locality, ensure the bulk and design of development does not detract from the scenic amenity of the area, maintain building heights at a compatible scale with adjacent development particularly at

the street [frontage](#) and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys. Setbacks have not been maximised to enable open space to dominate buildings.

The overdevelopment represented by excessive FSR, building height, wall height, and setback clearly gives grounds for concern.

We contend that the DA fails the major objectives of this control as follows:

- a) *Development in the [streetscape](#) (including buildings, fences and landscaping) should be designed to:*
 - i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
 - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
 - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street [frontage](#) and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*

[Setback Principles in Low Density Areas](#)

- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

3.1.1.3 Roofs

Roofs have not been designed to avoid or minimise view loss and reflectivity.

The design of the roofs exceed the maximum building height and wall height, and is unreasonable.

The overdevelopment represented by excessive FSR, building height, wall height, and setback clearly gives grounds for concern.

We contend that the DA fails the major objectives of this control as follows:

See also paragraph 3.4.3 Views regarding roof forms to minimise view loss.

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*

3.3 Landscaping

We are concerned that 20-25m high trees are proposed in our viewing corridors and our solar access corridors

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The proposed development does not protect the amenity of existing and future residents and minimise the impact of new development, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

The DCP states:

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.*
- b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*
- c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in*

accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

View Sharing

The proposed development does not satisfy view loss consideration under the controls.

No adequate View Loss Analysis has been prepared by the Applicant.

There is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Our comments are as follows.

In Tenacity, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe to devastating impact is considered unreasonable.

Application of Tenacity planning principle

We are concerned that no adequate consideration of view impact from our property.

The views lost are views to the harbour

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land

and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however we have no confidence that the assessment is accurate due to the absence of height poles.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In our opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view to the south and south-east is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. Our large living, dining, and kitchen all face the view.

The composition of the arc is constrained to the south and south-east either side of the subject site, by built forms and landscape.

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in Tenacity.

The proposed development will take away views for its own benefit.

The view from our living zones and decks towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is severe to devastating and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the

protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the harbour boundary of the subject site at angles to the south and south-east, from standing [1.4m] and seated [1.2m] positions.

An arc of view to the south and south-east is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. Our combined living area, dining area, kitchen and outdoor living room is on the first floor, contrary to the applicants statements. In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

We attach a series of photographs from our highly used Living Room and Entertainment Decks.









We contend that the proposed development must be reduced in massing so as to maintain our view of the harbour.

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

We consider the extent of view loss in relation to our living room zones to be **severe to devastating** using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as severe to devastating in our opinion the threshold to proceed to Step 4 of *Tenacity* is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

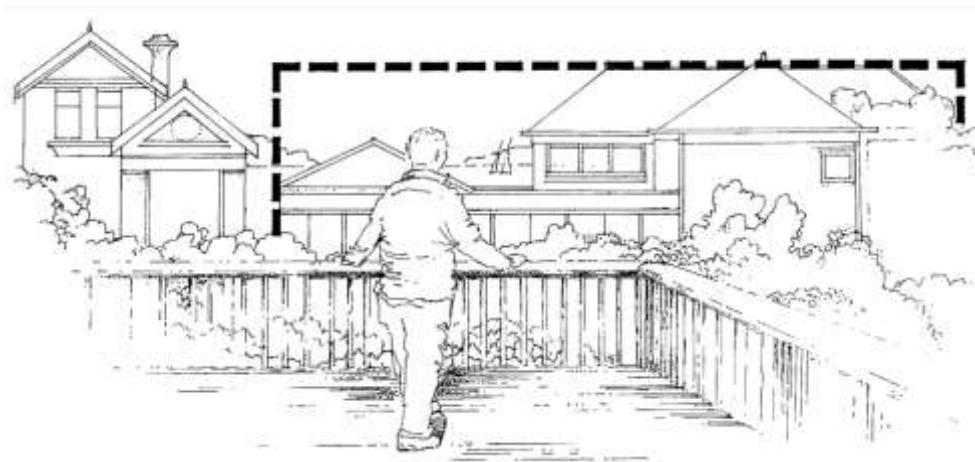
Step 4 is quoted below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In our opinion the extent of view loss considered to be **severe to devastating**, in relation to the views from our living rooms and living room deck of our dwelling, particularly to the south and south-east. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, we can provide additional commentary.



Where there is a potential view loss, Council could require a maximum building height of less than 8m for part of the building.

The private domain visual catchment is an arc to the south to south-east from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to our property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without height poles erected, we conclude that we would be exposed to a severe to devastating view loss.

The non-compliance with planning outcomes and controls of the proposed development cause this loss.

- Front Setback
- Building Height
- FSR

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel), “the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a

potentially affected view". The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development

The proposed development cannot be supported on visual impacts grounds.

There is no reason why our view of the harbour cannot be maintained in full.

Height Poles/ Templates

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens
- All proposed Trees & Landscape

3.4.1 Sunlight Access & Overshadowing

We contend that the proposed development does not provide equitable access to light and sunshine, and does not allow adequate sunlight to penetrate private open spaces and windows to the living spaces and habitable rooms of the adjoining properties in the mid-winter mornings

We contend that the proposed development does not maximise the penetration of daylight into the habitable rooms by the non-compliant envelope, reducing considerably the available winter sky.

We contend that the proposed development does not maximise the penetration of sunlight including mid-winter morning sunlight to the windows, living rooms and to principal outdoor areas by encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and does not maximise setbacks to encourage solar penetration into properties.

This is totally caused by the envelope of the non-compliant dwelling.

All these non-compliant envelope forms add to the overall loss of sunlight.

Relevant DCP objectives to be met in relation to this part include the following:

- Objective 1) To provide equitable access to light and sunshine.*
- Objective 2) To allow adequate sunlight to penetrate:
private open spaces within the development site; and
private open spaces and windows to the living spaces/ habitable rooms
of both the development and the adjoining properties.*
- Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to
the windows, living rooms and to principal outdoor areas by:
encouraging modulation of building bulk to facilitate sunlight
penetration into the development site and adjacent properties; and
maximising setbacks on the southern side of developments to encourage
solar penetration into properties to the south.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

3.4.1.1 Overshadowing Adjoining Open Space

The proposed development does not ensure that reasonable access to sunlight is maintained, particularly in the winter morning.

Non-compliant development is causing solar loss.

The proposed development does unreasonably overshadow the public open space, by proposing non-compliant development casting additional shadow into the public open space in the E2 zone.

The non-compliant building envelope will cause unreasonable solar loss in the winter morning to the adjoining open space of neighbours.

Any solar loss beyond a fully compliant envelope is considered totally unreasonable to the adjoining open space.

3.4.1.2 Maintaining Solar access into living rooms of adjacent properties

The proposed development does not ensure that reasonable access to sunlight is maintained in the early winter mornings.

Non-compliant development is causing solar loss.

The non-compliant building envelope will cause unreasonable solar loss to living rooms in the

mornings, when solar access is vital to warm the house.

Any solar loss beyond a fully compliant envelope is considered totally unreasonable to the living rooms in the early mornings

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Council will note from the above solar access diagrams that our northern windows will lose sun from the non-compliant envelope during the morning hours from the non-compliant envelope.

We ask for a compliant 8.5m maximum building height, and compliant side setback to allow more reasonable solar access.

We ask Council to obtain from the Applicant hourly overshadowing morning elevational drawings of our northern windows.

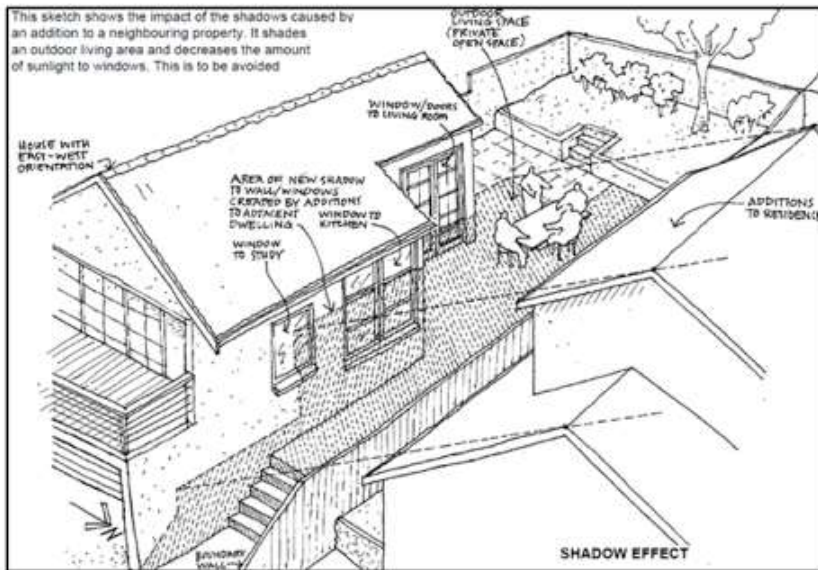


Figure 10 - Shadow effect

diagram.

Note: the building in this figure has an east/west orientation.

Privacy & Security

The proposed development does not ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The siting of the non-compliant development is positioned too close to the boundary, and will not provide acoustic or visual privacy to our dwelling.

The proposed building layout has not been designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposed development has not orientated all the living areas, habitable rooms and windows to private open space areas or to the rear or the street to limit overlooking. Some of these windows face our property, and that creates the problems.

The windows facing our property at all levels must have privacy screens, and need to be reduced in size.

The proposed development has not properly considered the effective location of doors, windows and balconies to avoid overlooking. We prefer the use of screening devices, high sills or obscured glass to these areas, and for Council to carefully consider all these matters.

The proposed development windows provide direct or close views into the windows of our property. We are concerned on all windows overlooking our dwelling, private open space and deck.

The design of the development gives rise to unreasonable privacy outcome by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into neighbours property.

The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing our property.

Relevant DCP objectives to satisfy in relation to this part include the following:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

We contend that the proposed development does not accord with this control.

The elevated side stair is unacceptable, as users would be able to overlook into our private open space.

Proposed decks within 9m of our windows and our decks must be provided with full height privacy screens.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area, with height, setback, and side boundary envelope control.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above.

Response: The proposed development result in a privacy impact with the proposed decks and stairs facing neighbours without any screening devices being provided, looking directly into private open space of neighbours.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a poor design and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of complaint heights and setbacks.

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of privacy screens would reduce the impact of the development.

Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Response: Little landscaping is proposed, to screen the proposed decks.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

In applying these criteria Meriton v Sydney City Council [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

That is our great concern - the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

3.4.2.1 Window Design and Orientation

- a) *Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) *When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

We ask for all windows facing the side setback zone to have 1.7m high sills, and be redesigned to be offset to our windows. All doors and windows to have obscured glass.

3.4.2.2 Balconies and Terraces

Architectural or landscape screens has not been provided to balconies and terraces to limit overlooking of our property. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

Where the proposed development has provided screens they exceed wall height and building height controls.

We contend that the DA fails the major objectives of this control as follows:

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*

3.4.2.3 Acoustical Privacy (Noise Nuisance)

We are concerned of the noise emitted from plant equipment including pool pumps.

We contend that the DA fails the major objectives of this control as follows:

- a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) *Proposed development and activities likely to generate noise including certain outdoor living areas like, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

3.9 Mechanical Plant Equipment

We are concerned that the plant equipment including air conditioning (both heating and cooling systems and ventilation), swimming pool filtration and other mechanical systems will create excessive noise.

We contend that the DA fails the major objectives of this control as follows:

Mechanical Plant Equipment refers to the necessary infrastructure to support and maintain services or operations including air conditioning (both heating and cooling systems and ventilation), swimming pool filtration and other mechanical systems. Plant may also maintain other systems, such as plumbing and lighting for larger developments.

3.9.1 Plant Rooms

We request that the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access and maintenance area surrounding the plant/machinery item for access and ventilation.

We are concerned over excessive excavation for plant rooms, creating excessive vibration.

We contend that the DA fails the major objectives of this control as follows:

- a) *Plant rooms are generally required to accommodate mechanical plant systems for commercial buildings or major residential development and used exclusively for that*

purpose. The design and size of these rooms will vary depending on the technical specifications of the systems and other factors such as access and ventilation.

- b) *The provision of plant equipment in low density residential development rarely demands exclusive rooms for the occupation of plant i.e. a 'plant room', but where an exclusive plant room is proposed, the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access/maintenance area surrounding the plant/machinery item for access and ventilation*. Plant rooms are not to be used for other purposes such as for storage and laundry and the overall size of the plant room should generally be less than a size of habitable rooms and must not add to building bulk or result in excessive excavation. In considering the location of mechanical plant equipment in dwelling houses, the use of an otherwise non-habitable location/ space or under storey that is well ventilated and which minimise noise impacts are preferred.*

***Note:** *While additional space around plant equipment may be required for occupational, health and safety reasons, (i.e. more than 0.5m around the plant) then the floor area will be calculated as gross floor area for the purposed of the FSR calculation.*

3.9.3 Noise from Mechanical Plant

We contend that the DA fails the major objectives of this control as follows:

External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

Note: *Excessive noise from the operation of mechanical plant such as air conditioning units, swimming pool pumps, and ventilation and refrigeration systems can disturb residents, disrupt sleep, interfere with normal daily activities or significantly impact on people's health.*

PART 4 DEVELOPMENT CONTROLS AND DEVELOPMENT TYPES

4.1 Residential Development Controls

We contend that the DA fails the major objectives of this control as follows:

This section of the plan provides controls for development generally in LEP Zones R1, R2, R3, E3 and E4. These paragraphs may also apply to residential development elsewhere in Manly and are to be read in conjunction with development standards in the LEP.

Relevant DCP objectives to be met in relation to residential development include the following:

- Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.*
- Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.*
- Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.*
- Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.*
- Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.*
- Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.*
- Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.*

4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)

The proposed development does not provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposed development does not control the bulk and scale of buildings.

Clause 4.3 of the LEP restricts the height of any development on the subject site to 8.5 metres. The proposed additions result in a maximum height over 8.5m varies the development standard.

The DCP permits a maximum wall height of 7.2m. The proposed additions result in a maximum height over 7.2m varies the development standard.

There has been no attempt to moderate the height of the proposed building to match neighbouring dwellings. Storey heights above 3.2m are considered excessive, and ceiling heights above 2.7m excessive.

The non-compliance leads directly to amenity loss.

The proposed development does not minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores), views from nearby

residential development to public spaces (including the harbour and foreshores), and views between public spaces (including the harbour and foreshores).

The proposed development does not maintain adequate solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and maintain adequate to habitable rooms of adjacent dwellings.

The proposed development does not ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

We contend that the DA fails the major objectives of this control as follows:

While the LEP contains Height of Buildings development standard and special height provisions, these paragraphs control the wall and roof height and the number of storeys within and in support of the LEP provisions in relation to residential development.

LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to controls at paragraph 4.1.2 of this DCP.

We contend that on a new build DA, that there is no reason why the proposals should not follow the 8.5m maximum building height.

4.1.2.1 Wall Height

The control is 7.2m.

The proposed wall heights exceeds 7.2m

The objectives have clearly not been met.

The visual impact from adjoining properties and from the public recreational zones is one of visual bulk. The roof forms will dominate the views from the public recreational zones, from the street, other neighbours properties and the view from our property.

The proposed development does not minimise the impact of development to our property as it creates view loss, solar loss, privacy loss, and considerable visual bulk.

The proposed development does not respond to site topography and does not discourage excavation of the natural landform.

The site topography has not been properly addressed, leading to non-compliance and poor visual bulk.

The design has not discouraged excavation of the natural landform: it has taken one enormous hole out of the natural landform that could never be replaced.

This is contrary to DCP controls.

The extent of the non-compliance is clear, but unstated in many areas.

This non-compliance in conjunction with the front and rear setback non-compliance will result in a significant bulk and scale imposing on the private open space of neighbours, public domain, and our property.

There is a significant concern over overshadowing and privacy loss as a result of this element.

Overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

We contend that the DA fails the major objectives of this control as follows:

Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.

[b] For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio that is applied in Figure 27 - Interpretation of Wall Height based on Slope. The slope of land on which the wall is sited will differ from one building to another and from one elevation of that building to another elevation and will be used in Figure 28 below to determine the maximum wall height in each case.

We contend that on a new build DA, that there is no reason why the proposals should not follow the maximum wall height.

4.1.2.3 Roof Height

Control 8.5 m

Proposed Exceeds 8.5m

We contend that the DA fails the major requirement of this control:

Roofs should complement the roof pitch and forms of the existing buildings in the streetscape

The proposed roofs do not complement the roof pitch and forms of the existing buildings in the streetscape or to our dwelling to the south.

We are concerned that all these roof structures are pushed well into non-compliant height zones, making the outcome every more concerning.

We contend that the DA fails the major objectives of this control as follows:

Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.

Note: As the LEP definition 'Building Height' incorporates plant and lift overruns, these structures must be similarly contained and not protrude above the maximum roof height.

We contend that on a new build DA, that there is no reason why the proposals should not follow the maximum building height.

4.1.4 Setbacks (front, side and rear) and Building Separation

The proposed development does not maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposed development does not ensure and enhance local amenity by providing privacy, providing equitable access to light, sunshine and air movement and facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.

The proposed development does not define and add character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and facilitate safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

The proposed development does not enhance and maintain natural features by accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees; does not ensure the nature of development does not unduly detract from the context of the site

We contend that the DA fails the major objectives of this control as follows:

Note: This section addresses the buildings' setback from its various property boundaries.

Relevant DCP objectives to be met in relation to this part include:

- 1. To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*
- 2. To ensure and enhance local amenity by:*
 - providing privacy;*
 - providing equitable access to light, sunshine and air movement; and*
 - facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
 - defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
 - facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*
- 3. To promote flexibility in the siting of buildings.*
- 4. To enhance and maintain natural features by:*
 - accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
 - ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
 - ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*
- 5. To assist in appropriate bush fire asset protection zones*

We contend that the proposed dwelling must align with our external wall zones of our dwelling and that of our neighbours dwelling.

4.1.4.1 Street Front setbacks

Control: Prevailing Street Setbacks 9.7m to 12.3m to Ponsonby Parade

Proposed: 6.5 & 7.5m

We contend that the proposed development needs to increase Street Setbacks to correspond with external wall zones of neighbours, represented by neighbours setbacks with a 9.7m setback to #16 Ponsonby Parade Seaforth and 12.3m setback to #10 Ponsonby Parade Seaforth. Eaves to be reduced to match neighbours.

We contend that the DA fails the major objectives of this control as follows:

[a] Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity

[b] Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.

[c] Where the streetscape character is predominantly single storey building at the street frontage, the street setback is to be increased for any proposed upper floor level. See also paragraph 4.1.7.1.

Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

[d] Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.

Note: *Reference to 'prevailing building lines' in this paragraph means the building lines determined in undertaking the context and site analysis required to accompany all DAs (see Council's Administrative Guidelines) including, in this case, demonstrated survey of all building lines and street frontages in the vicinity i.e. the visual catchment along the street.*

We contend that the proposed dwelling must align with our dwelling and that of our neighbours dwelling, in the eastern facade.

We contend the street frontage must allow an increased setback from the boundary.

4.1.4.4 Rear Setbacks

We are concerned that the proposed development has not responded with an appropriate consideration of rear setback within the SEPP Rear 25%.

We refer to earlier comments.

4.1.5 Open Space and Landscaping

We are concerned that 20-25m high trees are proposed within our viewing corridors and solar access corridors.

We contend that the DA fails the major objectives of this control as follows:

Relevant DCP objectives to be met in relation to these paragraphs include the following:

- 1. To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna*
- 2. To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- 3. To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- 4. To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- 5. To minimise the spread of weeds and the degradation of private and public open space.*
- 6. To maximise wildlife habitat and the potential for wildlife corridors*

4.1.8 Development on Sloping Sites

The design of development does not respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.

Of particular concern the proposed development does not generally step with the topography of the site as the proposed development simply ignores building height and wall height controls, and does not step down the slope, but projects roof heights as if it is a flat site.

The DCP states:

Relevant DCP objectives to be met in relation to these paragraphs include:

- Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.*
- Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.*
- Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.*

Requirements

- a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) Developments on sloping sites must be designed to:*
- i) generally step with the topography of the site; and*
 - ii) avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

Driveways on sloping sites

- c) On steep sites, driveways must be designed so they do not dominate the street frontage, by:*
- i) limiting their height above existing ground level to avoid the need for elevated ramps and similar structures to access car parking areas, especially those which may encroach on public land;*
 - ii) limiting their width;*
 - iii) using materials that do not visually detract from the natural surroundings; and*

iv) retaining significant trees.

The fundamental problem with the design concept is that the design does not step with the sloping topography.

In this respect, a better design option, a more skilful design, would be to present a lowering of the building to follow the existing ground levels.

4.4.5 Earthworks (Excavation and Filling)

The proposed development does not limit excavation as required by Council controls, and does not limit “cut and fill” and other earthworks.

The proposed excavation would discourage the alteration of the natural flow of ground and surface water. No detailed engineering study has been commissioned to consider these issues.

We are greatly concerned that the excavation will have an adverse effect upon the natural environment or adjoining and adjacent properties, such as mine.

We are concerned on the excessive vibration risks.

We are greatly concerned that the excavation will create airborne pollution, by the excessive excavation of substantial volume of rock, and we are concerned about fine dust being emitted for extended periods whilst this massive basement is excavated, blowing not only over neighbours.

We are greatly concerned that the excavation will have an adverse effect upon preserving the integrity of the physical environment, and significantly the structural concerns to our property.

We are greatly concerned that the massive excavation will have an adverse impact our adjoining land, with excessive vibration and structural instability.

The proposal includes extensive excavation of the site up to **5m deep**, for a multitude of uses.

This is contrary to DCP controls.

The extent of the basement will cut through the upper watercourse layers of sandy and silty clay soils, very stiff clay layers, to siltstone, and then well below to dense sandstone bedrock levels forming a complete barrier to the feed of water to the vegetation below. This is a concern.

The extensive vibration caused by this massive basement cutting through dense sandstone over the site will cause massive disturbance, vibration risks and residential amenity disturbance, and will have a high risk to the integrity of the physical environment.

We contend that the DA fails the major objectives of this control as follows:

Note: Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, “cut and fill” and other earthworks;*
- Discouraging the alteration of the natural flow of ground and surface water;*
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

4.4.5.1 General

The controls state that on steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features. These techniques are not being used.

Excavation under the canopy of any tree, including those trees on our property, is being planned, without any justification providing its long-term survival and stability is not jeopardised.

We contend that the DA fails the major objectives of this control as follows:

[a] Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including vegetation and prominent rock outcrops.

[b] Natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries

[c] On steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features.

[d] Excavation under the canopy of any tree (including those on neighbouring properties) will only be permitted providing its long-term survival and stability is not jeopardised. Such excavation must be supported by an Arborist report.

[e] Approved sediment, siltation and stormwater control devices must be in place (and maintained) prior to and during the carrying out of any earthworks and other works on the site.

4.4.5.2 Excavation

We contend that the DA fails the major objectives of this control as follows:

Excavation is generally not limited to 1m below natural ground and not contained within the footprint of the building.

4.4.5.3 Filling

We are concerned that filling might be used in areas. We seek clarity on this matter.

4.4.5.4 Retaining Walls

We have raised our concerns in previous section, relating to the non-compliant and unreasonable depth of the excavation on this particularly dangerously steep site.

SECTION 8: NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Veloshin**, [**Veloshin v Randwick Council 2007**], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies**, [Davies v Penrith City Council 2013], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin**, [Veloshin v Randwick Council 2007], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

Commentary:

The non-compliant elements of the proposed development, particularly caused from the non-compliant setbacks, and the non-compliant pool, would have most observers finding ‘*the proposed development offensive, jarring or unsympathetic in a streetscape context*’

SECTION 9: AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council's consideration. We do hope that Council will advise the Applicant that unless an amended plan submission is promptly forwarded, that refusal may be the outcome.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Reduce Building Heights, and all structures on the roof including solar panels to be under 8m
2. Increase Street Setbacks to correspond with external wall zones of neighbours, represented by neighbour's setbacks with a 9.7m setback to #16 Ponsonby Seaforth and 12.3m setback to #10 Ponsonby Seaforth. Eaves to be reduced to match neighbours.
3. Reduce all storey heights to a maximum of 3.2m in all Units, and reduce ceiling heights to 2.7m in all Units. Position ground levels to match *ground level existing* at ground level terrace levels
4. Reduce Building at south-west corner [Unit 7 Block] by 0.5m, with the ground floor reduced to RL 66.3 [adjacent ground level existing at RL 66.28], with a flat roof at RL 72.4 to improve viewing corridor to harbour. Delete pitched roof detail over Unit 7. Reduce heights further until harbour view corridor is protected.
5. Further reductions of bulk in the central section of the site that represents the 'Rear 25%' of the site, to ensure central 12.6m zone [50.29m x 25%] is no greater than single storey.
6. Removal of all new proposed trees to harbour viewing corridor, and solar access corridor, including all new trees over 4m in height in the western setback zone, and in the Ponsonby Parade front setback zone.
7. Increase Sill levels to 1.7m high, with obscured glass to all windows in western elevation
8. All privacy screens to be shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
9. All planters in Units facing neighbours at all levels to have landscape to a 1.8m height
10. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
11. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
12. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.

13. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
14. The dilapidation survey should comprise a detailed inspection of #9 Ross both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of #9 Ross to allow then to confirm that the dilapidation report represents a fair record of actual conditions.

We ask Council to consider all conditions within Appendix A

SECTION 10

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

SUITABILITY OF THE SITE

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

PUBLIC INTEREST

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

SECTION 11 CONCLUSION

The proposed development does not satisfy the relevant objectives of the SEPP HSPD, LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the the SEPP HSPD, LEP and DCP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.

23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
 - the view loss, solar loss, visual and acoustic privacy, and visual bulk impacts from the proposed development into our property well above controls,
 - The extent of the proposed building envelopes
 - The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-complaint height, FSR, and front setbacks taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, visual privacy, acoustic privacy, visual bulk, and loss of morning winter sun, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and

5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

We contend that the Development Application should be refused on the following grounds.

Council cannot be satisfied that:

No written requests under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify contraventions of clause 26 under the SEPP (Housing for Seniors and People with a Disability) 2004 development standards has been submitted, nor would it be able to adequately address and demonstrate that:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the applicant's written request has not adequately addressed the matters in this respect as the request has not addressed the significant under forecast of GFA
- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within R2 Low Density Residential zone

Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

- Clause 2 Aims of Policy
- Clause 29 Character
- Clause 30 Site Analysis
- Clause 31 Design of in-fill self-care housing
- Clause 32 Design of residential development
- Clause 33 Neighbourhood Amenity and Streetscape
- Clause 34 Visual and Acoustic Privacy
- Clause 35 Solar Access
- Clause 40 Development Standards

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the LEP:

- 1.2 Aims of Plans

- 2.3 Zone Objectives Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.4 Floor Space Ratio
- 6.2 Earthworks

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the DCP

- 1.7 Aims and Objectives of this Plan
- 3.1.1 Streetscape (Residential areas)
- 3.3.1 Landscaping Design
- 3.4.1 Sunlight Access & Overshadowing
- 3.4.2 Privacy and Security
- 4.1 Residential Development Controls
- 4.1.3 Floor Space Ratio (FSR)
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.1 Street Front setbacks
- 4.1.5 Open Space and Landscaping
- 4.1.8 Development on Sloping Sites
- 4.4.5 Earthworks (Excavation and Filling)
- 4.4.5.1 General
- 4.4.5.2 Excavation

The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b), (c), (d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

The proposal is contrary to Section **4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact on the natural and built environments in the locality.

The proposals are unsuitably located on the site pursuant to Section **4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

The proposal is contrary to the public interest pursuant to Section **4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

If this does not occur the Development Application should be **REFUSED** by Council.

Yours faithfully,

Michael Twigg and Nicole Crabb
9 Ross Street
Seaforth
NSW 2092

SECTION 12: APPENDIX:

Conditions of Consent

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

Approved Land Use

Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.

Conditions to be satisfied prior to the issue of the CC

Amendments to the approved plans [**see attached list in body of written submission*]

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Reduce Building Heights, and all structures on the roof including solar panels to be under 8m
2. Increase Street Setbacks to correspond with external wall zones of neighbours, represented by neighbour's setbacks with a 9.7m setback to #16 Ponsonby Seaforth and 12.3m setback to #10 Ponsonby Seaforth. Eaves to be reduced to match neighbours.
3. Reduce all storey heights to a maximum of 3.2m in all Units, and reduce ceiling heights to 2.7m in all Units. Position ground levels to match *ground level existing* at ground level terrace levels
4. Reduce Building at south-west corner [Unit 7 Block] by 0.5m, with the ground floor reduced to RL 66.3 [adjacent ground level existing at RL 66.28], with a flat roof at RL 72.4 to improve viewing corridor to harbour. Delete pitched roof detail over Unit 7. Reduce heights further until harbour view corridor is protected.
5. Further reductions of bulk in the central section of the site that represents the 'Rear 25%' of the site, to ensure central 12.6m zone [50.29m x 25%] is no greater than single storey.
6. Removal of all new proposed trees to harbour viewing corridor, and solar access corridor, including all new trees over 4m in height in the western setback zone, and in the Ponsonby Parade front setback zone.
7. Increase Sill levels to 1.7m high, with obscured glass to all windows in western elevation
8. All privacy screens to be shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
9. All planters in Units facing neighbours at all levels to have landscape to a 1.8m height
10. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
11. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
12. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
13. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
14. The dilapidation survey should comprise a detailed inspection of #9 Ross both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the owner of #9 Ross to allow then to confirm that the dilapidation report represents a fair record of actual conditions.

Boundary Fences to be installed prior to excavation.

All windows and doors facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Soil and Water Management Program

Vehicle Crossing Application

Pedestrian sight distance at property boundary

Location of security gate and intercom system

Minimum driveway width

Access driveway

On-site Stormwater Detention Details

Stormwater Disposal

Sydney Water

Water Quality Management

External finishes to Roof

Colours & Materials

New Landscaping Plan

Project Arborist

Tree Protection

Tree Trunk, Root and Branch Protection

Root Mapping

Tree Removal within the Road Reserve

Mechanical plant location

AC Condenser Units

No excavation within 3m of boundary
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Conditions that must be addressed prior to any commencement

Pre-Construction Dilapidation Report
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary
Demolition and Construction Traffic Management Plan
On Street Work Zones and Permits
Kerbside Parking Restrictions

Project Arborist
Tree Removal
Tree Removal in the road reserve
Tree Trunk, Branch, and Root Protection
Tree protection
Tree and vegetation removal from property

Conditions to be complied with during demolition and building works

Road Reserve
Removing, handling and disposing of asbestos
Demolition works – Asbestos

Property Boundary levels
Survey Certificate

Implementation of Demolition Traffic Management Plan
Implementation of Construction Traffic Management Plan

Traffic Control during Road Works
Vehicle Crossings
Footpath Construction

Geotechnical issues
Detailed Site Investigation, Remedial Action Plan & Validation
Installation and maintenance of sediment controls
Building materials
Rock Breaking
Protection of adjoining property
Vibration to reduce to 2.0mm/sec
No excavation within 3m of boundary

Waste Management during development
Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works
Tree and vegetation protection
Tree Condition
Native vegetation protection
Protection of rock and sites of significance
Aboriginal heritage

Protection of Sites of Significance
Notification of Inspections

Conditions which must be complied with prior to the issue of the OC

Post Construction Dilapidation Report

Certification of Structures
Geotechnical Certificate
Environmental Reports Certification
Landscape Completion Certification
Certification of Civil Works & Works as executed data on council land
Fire Safety Matters
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures
Positive Covenant for the maintenance of stormwater pump out facilities

Reinstating the damaged road reserve during construction

Condition of retained vegetation

Stormwater disposal

Works as executed drawings - stormwater

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

Ongoing Conditions that must be complied with at all times

Approved Land Use
Maintenance of solid fuel heater
Operation of solid fuel heaters
Landscape maintenance
Landscaping adjoining vehicular access
Maintenance of stormwater treatment measures
Retention of Natural Features
No additional trees or scrub planting in viewing or solar access corridors of neighbours
Environmental and Priority Weed Control
Control of weeds
No planting environmental weeds
Maintain fauna access and landscaping provisions
Noise
Noise Nuisance from plant
Swimming pool filter, pump and AC units [noise]
Outdoor lighting
Lighting Nuisance
Plant room and equipment for operational conditions - Noise and vibrations